

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BURUJAH ISMAIL,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 15-cv-12208

Honorable Laurie J. Michelson

Magistrate Judge R. Steven Whalen

**ORDER GRANTING PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT [17],
DENYING DEFENDANT’S MOTION FOR SUMMARY JUDGMENT [20], AND
REMANDING FOR FURTHER PROCEEDINGS**

Before the Court is Executive Magistrate Judge R. Steven Whalen’s Report and Recommendation. (R. 22.) At the conclusion of his Report and Recommendation, Magistrate Judge Whalen notified the parties that they were required to file any objections within fourteen days of service, as provided in Federal Rule of Civil Procedure 72(b)(2) and Eastern District of Michigan Local Rule 72.1(d), and that “[f]ailure to file specific objections constitutes a waiver of any further right of appeal.” (*Id.*, PID 486.) No objections were filed.

In *United States v. Walters*, 638 F.2d 947, 949–50 (6th Cir. 1981), the Sixth Circuit established a rule of procedural default, holding that “a party shall file objections with the district court or else waive right to appeal” and that “a party shall be informed by the magistrate [judge] that objections must be filed within ten days or further appeal is waived.” In *Thomas v. Arn*, 474 U.S. 140, 144 (1985), the Supreme Court held that this rule violates neither the Federal Magistrates Act nor the federal constitution. Thus, the Court finds that the parties’ failure to object is a procedural default, waiving review of the magistrate judge’s findings by this Court. See *Thomas*, 474 U.S. at 149 (explaining that Sixth Circuit’s waiver-of-appellate-review rule

rested on the assumption “that the failure to object may constitute a procedural default waiving review even at the district court level”); *Garrison v. Equifax Info. Servs., LLC*, No. 10-13990, 2012 WL 1278044, at *8 (E.D. Mich. Apr. 16, 2012) (“The Court is not obligated to review the portions of the report to which no objection was made.” (citing *Thomas*, 474 U.S. at 149–52)).

The Court therefore finds that the parties have waived further review of the Report and accepts the Magistrate Judge’s recommended disposition. It follows that Plaintiff’s Motion for Summary Judgment (Dkt. 17) is GRANTED to the extent it requests a remand for further administrative proceedings, and Defendant’s Motion for Summary Judgment (Dkt. 20) is DENIED. The Commissioner’s decision is REVERSED and this matter shall be REMANDED for further consideration consistent with the Report and Recommendation, pursuant to 42 U.S.C. § 405(g).

SO ORDERED.

s/Laurie J. Michelson
LAURIE J. MICHELSON
UNITED STATES DISTRICT JUDGE

Dated: August 29, 2016

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served on the attorneys and/or parties of record by electronic means or U.S. Mail on August 29, 2016.

s/Jane Johnson
Case Manager to
Honorable Laurie J. Michelson